PRIVILEGED OCCASION. — In dealing with the contention of the defendant in *Pullman* v. *Hill*, L. R. (1891) 1 Q. B. 524, where it will be remembered that the occasion was held not to be privileged when a merchant dictated a libellous letter to his stenographer to be type-written, Kay, L. J., remarked: "The consequences of such an alteration in the law of libel would be this: that any merchant, or any *solicitor*, who desired to write a libel concerning any person, would be priviliged to communicate the libel to any agent he pleased, if it was in the ordinary course of his business."

This dictum is of interest in view of the recent case of *Boxsius* v. *Goblet Frères et al.*, 10 Times L. R. 324, where a sharp distinction is drawn between merchants and solicitors. Both cases were in the Court of Appeal. In the latter, the court recognized the fact that it was an ordinary and frequent part of the business of solicitors to write letters containing defamatory matter, and, on that account, it concluded that solicitors should be allowed to discharge their duty to their clients in such a reasonably necessary and usual way as dictating letters, though libellous, to a stenographer, and having them afterwards copied by an office boy in a copy press. The decision seems sound, and in no way contradictory to the former case, if it simply enforces that well-established condition of privilege, that a defendant must not give a libellous statement greater publicity than is apparently reasonably necessary to discharge the duty or protect the interest which gives rise to the "occasion;" but if it is to be inferred from the doubtful language of the decision, that the case of a solicitor is to be treated as an exception to the general rule, it may seem, especially to laymen, as if the court attempted to grant another exemption to an already favored profession. Rightly considered, the case should be regarded as laying down a principle equally applicable to occupations such as commercial agencies, where similar communications to clerks are just as essential.

CONSTITUTIONAL DISSENT IN MASSACHUSETTS. — The Supreme Court of Massachusetts has several times within the past few years had to consider points in constitutional law whose decision turned upon questions of economics, and of the policy of farther extension of the powers and duties of the State, far more than upon the mere construction of the written instrument; and the opinions drawn out by the consideration of these points have shown a most interesting divergence. The cases are of two classes, — those which discuss contemplated regulation or assistance of private enterprise by the State, and those which discuss changes in the mode or extent of doing business by the State. In both sets of cases Mr. Justice Holmes is consistently in favor of the constitutionality, while not committing himself about the expediency, of the changes so far adjudicated upon by the court, and this, apparently, because he can find no provisions in the Constitution which assuredly forbid such changes. In the Interchangeable Mileage Ticket Case, the best example of the first class of cases (*Atty.-Gen.* v. *Old Colony R. R.*, 35 N. E. 252), he was accompanied by Mr. Justice Knowlton; and in the Municipal Coal Yards Case (*Opinion of the Justices*, 155 Mass. 598), and on the question of the Referendum (*Opinion of the Justices*, 36 N. E. 488), examples of the second class, by Mr. Justice Barker.

On the other side, Chief-Justice Field once thought that a statute

of the first class went too far in allowing the use of eminent domain for the creation of private trout ponds; and in this he was alone. *Turner* v. *Nye*, 154 Mass. 579. He and the remaining three Justices (Allen, Lathrop, Morton) went so far as to agree with the others in recognizing in the Gas and Electric Lighting Case (*Opinion of the Justices*, 150 Mass. 592), the propriety of the furnishing of artificial light by the State. These four Justices, however, the majority of the court, are generally against statutes which seem to involve either more regulation of industry, or any change in the mode or extent of doing business by the State (for a consideration of the cases, see an article by Mr. Jabez Fox, in 5 HARVARD LAW REVIEW, 30).

Such a continued and outspoken difference of opinion must go far toward preventing the decisions of the court from having the authority upon the subject which they otherwise might, and toward keeping the general question of the advisability of such frequent declaring of laws unconstitutional an open one. It is also to be noted that the views of the present majority are opposed to what are currently believed to be certain tendencies of the present development of society. It will be extremely interesting to see whether, when thus opposed, the tendencies will prove to be only ephemeral, or whether, the tendencies remaining, legislation of these kinds will be blocked only for a time.

ENGLISH AND SCOTCH LAW — SALE OF GOODS ACT. — In 1888, Judge Chalmers drafted a codification of the Law of Sales of Personal Property, with the object of assimilating the Scotch and English law on this subject. Since 1889, it has been before Parliament, and, on February 20, it received the Royal assent. It makes little change in the law in England, but very important changes in the law of Scotland, especially in regard to the passing of the property in specific goods sold but not delivered, and also in regard to the law of warranty (*actio quanti minoris*).

It is interesting to American lawyers — who see a similar process going on in Louisiana — to observe the progress the English law has been making in Scotland since the Union, and especially during the last fifty years. The passage of this Act is only one of many indications to this effect. One might cite numerous other statutes in this connection. The Mercantile Law Amendment Act of 1856, for instance, extended to Scotland several important features of the English law of sales. It changed much of the Scotch law respecting warranties as to quantity and quality, and introduced many of the practical effects of the rule, although not the rule itself, that the title to specific goods sold passes by force of the contract alone. Nor has this process of assimilation been effected entirely by statutes. Judicial legislation has accomplished much. The House of Lords, as Supreme Court of Appeals from Scotland, has exercised no influence in this direction. Through this channel, for instance, the right of stoppage *in transitu* appears to have made its way north.

As the old intimacy of Scotland with France and the Continent profoundly affected her law, public and private, so now her close association with England seems to be leading to similar results. Naturally, this "reception" has been confined chiefly to commercial law. But many other branches of the law have been influenced more or less. One need only cite the introduction of trial by jury, even in civil cases, and as a